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25 Attorneys for Defendant/Counterclaimant,
CYTOSPORT, INC.

26 **IN THE UNITED STATES DISTRICT COURT**
27 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
28 **WESTERN DIVISION**

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HANSEN BEVERAGE COMPANY, a
Delaware corporation, d/b/a
MONSTER BEVERAGE COMPANY,

Plaintiff/Counterdefendant,

v.

CYTOSPORT, INC., a California
corporation,

Defendant/Counterclaimant.

AND RELATED COUNTERCLAIM

Case No.: CV 09-031 VBF (AGRx)
Hon. Valerie Baker Fairbank
**STIPULATED
PROTECTIVE ORDER**

1 Plaintiff/Counterdefendant Hansen Beverage Company (“Hansen”) and
2 Defendant/Counterclaimant CytoSport, Inc. (“CytoSport”), recognizing that
3 each may have confidential business, financial, and/or trade secret information
4 relevant to the subject matter of this lawsuit that would otherwise be subject to
5 discovery, have agreed to this Protective Order on the terms set forth below. It
6 appearing to the Court that the parties have agreed to the terms of an appropriate
7 Protective Order to govern discovery proceedings in this action,

8 IT IS HEREBY ORDERED that:

9 1. This Order shall apply to all information produced during
10 discovery in this action that shall be designated by the party or person producing
11 it as “Confidential” or “Confidential-Attorneys Eyes Only” (collectively
12 “Confidential Information”). This Order shall not apply to information that,
13 before disclosure, is properly in the possession or knowledge of the party to
14 whom such disclosure is made, or is public knowledge. The restrictions
15 contained in this Order shall not apply to information that is, or after disclosure
16 becomes, public knowledge other than by an act or omission of the party to
17 whom such disclosure is made, or that is legitimately acquired from a source not
18 subject to this Order.

19 2. If an exhibit, pleading, interrogatory answer, or admission
20 (collectively “discovery response”), document or thing (collectively “document
21 or thing”), or a deposition transcript, other transcript of testimony, or declaration
22 or affidavit (collectively “testimony”) contains information considered
23 confidential by a party, such exhibit, pleading, discovery response, document or
24 thing, or testimony shall be designated “Confidential” or “Confidential-
25 Attorneys Eyes Only” by the party contending there is confidential information
26 therein.

27 3. In connection with an exhibit, pleading, discovery response,
28 document or thing, testimony or other court submission, the legend

1 “Confidential” or “Confidential-Attorneys Eyes Only” (in such a manner as will
2 not interfere with the legibility thereof) shall be affixed before the production or
3 service upon a party.

4 4. As a general guideline, a document should be designated
5 “Confidential” when it contains confidential business, technical or other
6 information that may be reviewed by the Receiving Party, the parties’ experts,
7 and other representatives, but must be protected against disclosure to third
8 parties. A document may be designated “Confidential-Attorneys Eyes Only”
9 only when it contains the following highly sensitive information: financial
10 information; cost information; pricing information; sales information; customer,
11 license, supplier, and vendor information; software and firmware for a party’s
12 products; technical and development information about a party’s products;
13 comparative product test results; business plans; marketing strategies; new
14 product plans and competitive strategies; or any other information that would
15 put the Producing Party at a competitive disadvantage if the information became
16 known to employees of the Receiving Party or third parties. Any document or
17 thing labeled as “Trade Secrets/Commercially Sensitive” by either party in
18 connection with the Trademark Trial and Appeal Board proceeding *Hansen*
19 *Beverage Company v. CytoSport, Inc.*, Opposition No. 91175473, shall be
20 subject to this Order and shall be treated as “Confidential-Attorneys Eyes Only”
21 information in this action.

22 5. All Confidential Information (*i.e.*, “Confidential” or “Confidential-
23 Attorneys Eyes Only” information) that has been obtained from a party during
24 the course of this proceeding shall be used only for the purpose of this litigation
25 and not for any other business, proceeding, litigation, or other purpose
26 whatsoever. Further, such information may not be disclosed to anyone except
27 as provided in this Order. Counsel for a party may give advice and opinions to
28 their client based on evaluation of information designated as Confidential

1 Information produced by the other party. For information designated
2 “Confidential-Attorneys Eyes Only,” such rendering of advice and opinions
3 shall not reveal the content of such information except by prior agreement with
4 opposing counsel.

5 6. All documents, or any portion thereof, produced for inspection only
6 (*i.e.*, copies have not yet been provided to the Receiving Party) shall be deemed
7 “Confidential-Attorneys Eyes Only.” If a copy of any such document is
8 requested after inspection, the document shall be deemed “Confidential” or
9 “Confidential-Attorneys Eyes Only” only if labeled or marked in conformity
10 with paragraph 2, with access and dissemination limited as set forth in
11 paragraphs 11-12.

12 7. Information disclosed at a deposition or other testimony may be
13 designated as “Confidential” or “Confidential-Attorneys Eyes Only” at the time
14 of the testimony or deposition, or within fourteen (14) days following receipt of
15 the transcript, and shall be subject to the provisions of this Order. Additional
16 information disclosed during a deposition or other testimony may be designated
17 as “Confidential” or “Confidential-Attorneys Eyes Only” by notifying the other
18 party, in writing, within fourteen (14) days after receipt of the transcript, of the
19 specific pages of the transcript that should also be so designated. Unless
20 otherwise agreed on the record of the deposition or other testimony, all
21 transcripts shall be treated as “Confidential-Attorneys Eyes Only” for a period
22 of fourteen (14) days after their receipt, and the transcript shall not be disclosed
23 by a non-designating party to persons other than those persons named or
24 approved according to paragraph 12 to review documents or materials
25 designated “Confidential-Attorneys Eyes Only” on behalf of that non-
26 designating party.

27 8. All exhibits, pleadings, discovery responses, documents or things,
28 testimony or other submissions, filed with the Court pursuant to this action that

1 have been designated “Confidential” or “Confidential-Attorneys Eyes Only,” by
2 any party, or any pleading or memorandum purporting to reproduce, paraphrase,
3 or otherwise disclose such information designated as Confidential Information,
4 shall be marked with the legend “Confidential” or “Confidential-Attorneys Eyes
5 Only” and shall be filed pursuant to and in compliance with L.R. 79-5.1 and the
6 Judge’s rules. If a filing under seal is requested, a written application and
7 proposed order shall be presented along with the document for filing under seal.
8 The original and Judge’s copy of the document shall be sealed in separate
9 envelopes with a copy of the title page attached to the front of each envelope.
10 The application shall request that the Court return the underlying document and
11 the sealed application without filing to the extent the Judge denies the
12 application to file under seal. The party seeking to seal documents must
13 demonstrate for each document or category of documents sufficient grounds to
14 warrant placing the documents under seal. With respect to dispositive motions,
15 such as motions for summary judgment, the party seeking to seal documents
16 must present compelling reasons to seal the documents.

17 9. As used in this Protective Order, “Trial Counsel” refers exclusively
18 to the counsel of record in this litigation and their paralegals, agents, and
19 support staff, or such additional attorneys as may be ordered by the Court, or
20 subsequently may be agreed upon by the parties, such agreement not to be
21 unreasonably withheld.

22 10. As used in this Protective Order, “independent experts or
23 consultants” refers exclusively to a person, who has not been and is not an
24 employee of a party or scheduled to become an employee in the near future, and
25 who is retained or employed as a consultant or expert for purposes of this
26 litigation, either full or part-time, by or at the direction of counsel of a party.

27 11. Material designated as “Confidential” that has been obtained from
28 a party during the course of this proceeding may be disclosed or made available

1 only to the Court, to Trial Counsel for either party, and to the persons
2 designated below:

3 (a) a party, or an officer, director, or designated employee of a
4 party deemed necessary by Trial Counsel to aid in the prosecution, defense, or
5 settlement of this action;

6 (b) independent experts or consultants (together with their
7 clerical staff) retained by such Trial Counsel to assist in the prosecution,
8 defense, or settlement of this action;

9 (c) court reporter(s) employed in this action;

10 (d) agents of Trial Counsel needed to perform various services
11 such as, for example, copying, drafting of exhibits, and support and
12 management services, including vendors retained by the parties, or by counsel
13 for parties, for the purpose of encoding, loading into a computer and storing and
14 maintaining for information control and retrieval purposes, transcripts of
15 depositions, hearings, trials, pleadings, exhibits marked by a party, or attorneys'
16 work product, all of which may contain material designated Confidential;

17 (e) witnesses in any deposition or other proceeding of this
18 action;

19 (f) any other persons as to whom the parties in writing agree.

20 12. Material designated as "Confidential-Attorneys Eyes Only" that
21 has been obtained from Hansen or CytoSport during the course of this
22 proceeding may be disclosed or made available only to the Court, to Trial
23 Counsel for either party, and to the persons designated below:

24 (a) independent experts or consultants (together with their
25 clerical staff) retained by such Trial Counsel to assist in the prosecution,
26 defense, or settlement of this action;

27 (b) authors and recipients of any material bearing a
28 "Confidential-Attorneys Eyes Only" legend;

1 (c) court reporter(s) employed in this action;

2 (d) agents of Trial Counsel needed to perform various services
3 such as, for example, copying, drafting of exhibits, and support and
4 management services, including vendors retained by the parties, or by counsel
5 for parties, for the purpose of encoding, loading into a computer and storing and
6 maintaining for information control and retrieval purposes, transcripts of
7 depositions, hearings, trials, pleadings, exhibits marked by a party, or attorneys'
8 work product, all of which may contain material designated Confidential-
9 Attorney Eyes Only;

10 (e) witnesses in any deposition or other proceeding in this action
11 who are the author or recipient of the "Confidential-Attorney Eyes Only"
12 material, or who, based on evidence, have seen the material in the past; and

13 (f) any other persons as to whom the parties in writing agree.

14 13. All Confidential Information used at a hearing or at trial shall
15 become public absent a separate order from the Court upon written motion and
16 sufficient cause shown. If any party desires at a hearing or at trial to offer into
17 evidence Confidential Information, or to use Confidential Information in such a
18 way as to reveal its nature or contents, such offers or use shall be made only
19 upon the taking of all steps reasonably available to preserve the confidentiality
20 of such Confidential Information. The party seeking to use the Confidential
21 Information must provide the party that produced such Confidential Information
22 sufficient time to request an order from the Court to limit the offer of such
23 Confidential Information. The party seeking to use the Confidential
24 Information stipulates that good cause exists and agrees to assist in any
25 application or motion to preserve the confidentiality of such Confidential
26 Information.

27 14. Any Confidential Information may be used in the course of any
28 deposition taken of the party producing such Confidential Information or its

1 employees without consent, or otherwise used in any deposition with the
2 consent of the party producing such Confidential Information, subject to the
3 condition that when such Confidential Information is so used, the party who
4 made the designation may notify the reporter that the portion of the deposition
5 in any way pertaining to such Confidential Information or any portion of the
6 deposition relevant thereto is being taken pursuant to this Order. Further,
7 whenever any Confidential Information is to be discussed or disclosed in a
8 deposition, any party claiming such confidentiality may exclude from the room
9 any person not entitled to receive such confidential information pursuant to the
10 terms of this Order.

11 15. A Receiving Party who objects to the designation of any discovery
12 response, document, or thing or testimony as “Confidential” or “Confidential-
13 Attorneys Eyes Only” shall state the objection by letter to counsel for the
14 Producing Party. If the objection cannot be resolved within five (5) days
15 following receipt of the objection, the Receiving Party may move the Court to
16 determine whether the discovery response, document, or thing or testimony at
17 issue qualifies for treatment as “Confidential” or “Confidential-Attorneys Eyes
18 Only.” If the Receiving Party files such a motion, the discovery response,
19 document, or thing or testimony at issue will continue to be entitled to the
20 protections accorded by this Stipulated Protective Order until and unless the
21 Court rules otherwise. If the Receiving Party files such a motion, the Producing
22 Party shall bear the burden of establishing that the discovery response,
23 document, or thing or testimony at issue qualifies for treatment as
24 “Confidential” or “Confidential-Attorneys Eyes Only.” Nothing herein shall
25 operate as an admission by any Party that any particular discovery response,
26 document, or thing or testimony contains “Confidential” or “Confidential-
27 Attorneys Eyes Only” Information for purposes of determining the merits of the
28 claims in this litigation. A party shall not be obligated to challenge the

1 propriety of the designation of any discovery response, document, or thing or
2 testimony at the time such designation is made; failure to do so shall not
3 preclude a subsequent challenge within a reasonable time. Further, a Party's
4 failure to challenge a designation during pretrial discovery shall not preclude a
5 subsequent challenge of such designation at trial or in connection with the
6 submission of any discovery response, document, or thing or testimony to the
7 Court for any purpose.

8 16. Notwithstanding anything contrary herein, if a party through
9 inadvertence or mistake produces discovery of any Confidential Information
10 without marking it with the legend "Confidential" or "Confidential-Attorneys
11 Eyes Only," or by designating it with an incorrect level of confidentiality, the
12 Producing Party may give written notice to the Receiving Party that the exhibit,
13 pleading, discovery response, document or thing, or testimony contains
14 Confidential Information and should be treated as such in accordance with the
15 provisions of this Protective Order. Upon receipt of such notice, and upon
16 receipt of properly marked materials, the Receiving Party shall return said
17 unmarked materials and not retain copies thereof, and must treat such exhibits,
18 pleadings, discovery responses, documents or things, or testimony as
19 Confidential Information and shall cooperate in restoring the confidentiality of
20 such Confidential Information. The inadvertent or unintentional disclosure by a
21 party of Confidential Information, regardless of whether the information was so
22 designated at the time of disclosure, shall not be deemed a waiver in whole or in
23 part of a party's claim of confidentiality either as to the specific information
24 disclosed or as to any other information relating thereto or on the same or
25 related subject matter, provided that the non-producing party is notified and
26 properly marked documents are supplied as provided herein. The Receiving
27 Party shall not be responsible for the disclosure or other distribution of belatedly
28 designated Confidential Information as to such disclosure or distribution that

1 may occur before the receipt of such notification of a claim of confidentiality
2 and such disclosure or distribution shall not be deemed to be a violation of this
3 Protective Order.

4 17. Documents and things produced or made available for inspection
5 may be subject to redaction, in good faith by the Producing Party, of sensitive
6 material that is subject to the attorney-client privilege or to work-product
7 immunity. Each such redaction, regardless of size, will be clearly labeled. This
8 paragraph shall not be construed as a waiver of any party's right to seek
9 disclosure of redacted information.

10 18. Neither the taking or the failure to take any action to enforce the
11 provisions of this Order, nor the failure to object to any designation or any such
12 action or omission, shall constitute a waiver of any signatory's right to seek and
13 obtain protection or relief, with respect to any claim or defense in this action or
14 any other action including, but not limited to, the claim or defense that any
15 information is or is not proprietary to any party, is or is not entitled to particular
16 protection or that such information embodies trade secret or other confidential
17 information of any party. The procedures set forth herein shall not affect the
18 rights of the parties to object to discovery on grounds other than those related to
19 trade secrets or other confidential information claims, nor shall it relieve a party
20 of the necessity of proper responses to discovery requests.

21 19. This Order shall not abrogate or diminish any contractual,
22 statutory, or other legal obligation or right of any party to this Order, as to any
23 third party, with respect to any Confidential Information. The fact that
24 Information is designated "Confidential" or "Confidential-Attorney's Eyes
25 Only" under this Order shall not be deemed to be determinative of what a trier
26 of fact may determine to be confidential or proprietary. This Order shall be
27 without prejudice to the right of any party to bring before the Court the question
28 of:

1 (a) whether any particular information is or is not Confidential
2 Information;

3 (b) whether any particular information is or is not entitled to a
4 greater or lesser degree of protection than provided hereunder; or

5 (c) whether any particular information is or is not relevant to
6 any issue in this case; provided that in doing so the party complies with the
7 foregoing procedures.

8 20. The terms of the Protective Order are applicable to Confidential
9 Information produced by a non-party, such non-party may designate
10 Confidential Information produced by it in connection with this litigation, and
11 that Confidential Information is protected by the remedies and relief provided
12 by the Protective Order.

13 21. Within thirty (30) days following the conclusion of this litigation,
14 all information designated as Confidential Information, except such documents
15 or information which incorporate or are incorporated into attorney work product
16 (a single copy of which may be retained in counsel's file), shall, upon request,
17 be returned to the Producing Party, or disposed of pursuant to the instructions of
18 the Producing Party.

19 22. The restrictions provided for above shall not terminate upon the
20 conclusion of this lawsuit, but shall continue until further order of this Court.
21 This Stipulated Protective Order is without prejudice to the right of a party

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1 hereto to seek relief from the Court, upon good cause shown, from any of the
2 provisions or restrictions provided herein.

3 **IT IS SO STIPULATED.**

4 KNOBBE, MARTENS, OLSON & BEAR, LLP

5
6 Dated: July 15, 2009

By: _____

7 John B. Sganga, Jr.
8 Steven J. Nataupsky
9 Lynda J. Zadra-Symes
10 Joseph S. Cianfrani

11 Attorneys for Plaintiff/Counterdefendant,
12 HANSEN BEVERAGE COMPANY

13 Dated: July 15, 2009

By: _____

14 Drew R. Hansen
15 Charles P. Rullman
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17 Mark M. Bettilyon
18 Samuel C. Straight
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20 Jed Hansen
21 Peter De Jonge
22 THORPE NORTH & WESTERN

23 Attorneys for Defendant/Counterclaimant,
24 CYTOSPORT, INC.

25 **IT IS SO ORDERED.**

26 Dated: July 15, 2009

27 

28 Hon. Alicia G. Rosenberg
United States District Judge

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